

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 18 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUSTIN T. YOUNGMAN,

Defendant - Appellant.

No. 04-30461

D.C. No. CR-04-00081-FVS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Fred L. Van Sickle, Chief Judge, Presiding

Argued and Submitted August 5, 2005
Seattle, Washington

Before: THOMPSON, T.G. NELSON, and WARDLAW, Circuit Judges.

Justin Youngman appeals his 51-month sentence under the United States Sentencing Guidelines. Youngman appeals the district court's decision that he cannot collaterally attack a prior Washington State conviction and the district

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

court's application of the Sentencing Guidelines. We have jurisdiction under 28 U.S.C. § 1291.

Application Note 6 to United States Sentencing Guideline § 4A1.2 does not confer an independent right to challenge a state court conviction collaterally.¹

Accordingly, we affirm the district court's conclusion that Youngman may not collaterally attack his Washington State conviction.

Youngman raised a challenge to the then mandatory Sentencing Guidelines in the trial court. Because Youngman has been subjected to nonconstitutional sentencing error he may seek resentencing under the post-*United States v. Booker* sentencing system.² Accordingly, we vacate Youngman's sentence and remand for resentencing consistent with *Booker*.

Sentence VACATED AND REMANDED.

¹ *United States v. Burrows*, 36 F.3d 875, 885 (9th Cir. 1994); *see United States v. Fondren*, 54 F.3d 533, 534-35 (9th Cir. 1994).

² 125 S. Ct. 738, 769 (2005).